

AMENDED IN SENATE APRIL 21, 2003

**SENATE BILL**

**No. 451**

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**Introduced by Senator Ducheny**  
**(Principal coauthor: Senator Morrow)**  
*(Principal coauthor: Assembly Member Vargas)*

February 20, 2003

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An act to add Section 107.4 to the Revenue and Taxation Code,  
relating to taxation, ~~to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 451, as amended, Ducheny. Taxation of possessory interests.

Existing property tax law requires that all property subject to tax be assessed at its full value, and includes certain possessory interests among those property interests subject to tax. Existing property tax law defines a taxable possessory interest to be a use that is independent, durable, and exclusive.

This bill would clarify that, for purposes of the definition of a taxable possessory interest, a possession or use is not independent if it is pursuant to a contract, that includes, but is not limited to, a long-term lease, for the private construction, *renovation*, rehabilitation, *replacement*, management, or maintenance of housing for active duty military personnel and their dependents, if the housing units meet specified criteria.

*The bill would state that it is declaratory of existing law.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares as follows:

(a) The provision of military family housing is a mission of the military, as stated by the United States Department of Defense.

(b) Under the Military Housing Privatization Initiative (MHPI), Congress has entrusted private contractors to construct ~~and~~, *renovate, replace, or* manage military family housing pursuant to extensive guidelines and restrictions imposed by the military.

(c) The military family housing constructed and managed by private contractors pursuant to the MHPI is situated on a military ~~base facility~~ under the control of the military.

(d) A private contractor who constructs ~~and~~, *renovates, replaces, or* manages military family housing pursuant to the MHPI has neither the right nor the ability to exercise independent authority and control over the day-to-day management or operation of the military family housing, as demonstrated by all of the following:

(1) The number of units, ~~bedroom types~~ *number of bedrooms per unit*, and the unit mix are set by the military, and may not be changed by the contractor without prior approval by the military.

~~(2) Costs of construction of the project are controlled by the military and are subject to federal regulations.~~

~~(3) Financing for the project and rents charged for the housing~~  
~~(2) Tenants are designated by a military housing agency.~~

~~(3) Rents charged to military personnel or their dependents for the housing units are set by the military, and the military controls the distribution of revenues from the project to the private contractor.~~

~~(4) Financing for the project is subject to the approval of the military. The military has sole discretion over the approval of this financing.~~

~~(5) Evictions from the housing units are subject to the military justice system~~ *military justice procedures.*

~~(5) All services for the project are required to be purchased from the military base.~~

~~(6) Services for the project normally supplied by a municipality are required to be purchased from the military facility or from a provider designated by the military facility.~~

1     (7) *The military prescribes rules and regulations governing the*  
2 *use and occupancy of the property.*

3     (8) *The military has the authority to remove or bar persons from*  
4 *the property.*

5     (9) *The military has the authority to impose access restrictions*  
6 *on the contractor and its tenants.*

7     SEC. 2. Section 107.4 is added to the Revenue and Taxation  
8 Code, to read:

9     107.4. For purposes of paragraph (1) of subdivision (a) of  
10 Section 107, there is no independent possession or use of land or  
11 improvements if that possession or use is pursuant to a contract that  
12 includes, but is not limited to, a long-term lease, for the private  
13 construction, ~~rehabilitation,~~ *renovation, rehabilitation,*  
14 *replacement,* management, or maintenance of housing for active  
15 duty military personnel and their dependents, if all of the following  
16 criteria are met:

17     (a) The military family housing constructed and managed by  
18 private contractor is situated on a military ~~base~~ *facility* under  
19 military control, and the construction of that housing is performed  
20 under military guidelines in the same manner as construction that  
21 is performed by the military.

22     ~~(b) The housing units do not utilize city or county services, but~~  
23 ~~instead utilize services purchased from the military base.~~

24     (b) *All services normally provided by a municipality are*  
25 *required to be purchased from the military facility or a provider*  
26 *designated by the military.*

27     (c) The private contractor is not given the right and ability to  
28 exercise any significant authority and control over the  
29 management or operation of the military family housing, separate  
30 and apart from the rules and regulations of the military.

31     (d) The number of units, ~~bedroom types~~ *the number of*  
32 *bedrooms per unit,* and the unit mix are set by the military, and may  
33 not be changed by the contractor without prior approval by the  
34 military.

35     ~~(e) Costs of construction of the project are controlled by the~~  
36 ~~military and are subject to federal regulation.~~

37     ~~(f) Financing for the project, and rents charged for the housing~~  
38 ~~units are set by the military.~~

39     ~~(g)~~

40     (e) *Tenants are designated by a military housing agency.*

1     (f) *Financing for the project is subject to the approval of the*  
2 *military in its sole discretion.*

3     (g) *Rents charged to military personnel or their dependents are*  
4 *set by the military.*

5     (h) *The military controls the distribution of revenues from the*  
6 *project to the private contractor, and the private contractor is*  
7 *allowed only a predetermined profit or fee for constructing the*  
8 *military family housing.*

9     ~~(h) Tenants for the housing units are chosen by a base housing~~  
10 ~~agency under military rules and regulations, and evictions from the~~  
11 ~~housing units are subject to the military justice system.~~

12     (i) *Evictions from the housing units are subject to the military*  
13 *justice system.*

14     (j) *The military prescribes rules and regulations governing the*  
15 *use and occupancy of the property.*

16     (k) *The military has the authority to remove or bar persons from*  
17 *the property.*

18     (l) *The military may impose access restrictions on the*  
19 *contractor and its tenants.*

20     SEC. 3. *The addition of Section 107.4 of the Revenue and*  
21 *Taxation Code made by this act does not constitute a change in, but*  
22 *is declaratory of, existing law.*

